

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**CRIMINAL MISCELLANEOUS No.23169 of 2016**

Arising Out of PS. Case No.-703 Year-2013 Thana- PATNA COMPLAINT CASE District-  
Patna

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Satya Prakash Gupta, Son of Late Gopal Prasad, resident of Mohalla Choudhrana  
Road, P.O.and P.S.- Danapur, Patna-801503

... .. Petitioner/s

Versus

1. State of Bihar
2. Shri Ajeet Kumar, Son of Late Birju Lal Sah, resident of Gola Road, Adjacent to  
vishal Mega Mart, P.O. and P.S.- Danapur, Patna-801503

... .. Opposite Party/s

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*Code of Criminal Procedure, 1973---section 482----Indian Penal Code---  
section 323, 420, 504---Bihar Co-operative Societies Act, 1935---section  
48---petition for quashing order taking cognizance for offence u/s 323,  
420, 504 IPC---allegation against Petitioners is that they started  
introducing themselves in public as Office bearers of the Co-Operative  
Society in question and fraudulently started selling the allotted plots of the  
members which had already been allotted/sold by the previous committee  
to the respective members---Findings: the petitioner has not shown any  
material to show that before the cancellation of the sale deed of the O.P.  
No. 2, any opportunity was given to him by the concerned officer--- the  
provisions of section 48 of the Bihar Co-operative Societies Act do not  
confer a power upon the concerned Registrar to cancel the allotment of a  
plot of an allottee without giving him an opportunity of hearing and  
further the right and title of a person with respect to a property must be  
determined by a civil court of competent jurisdiction and such power  
should not be exercised by the Registrar--- there is sufficient prima facie  
material to show the wrongful loss to the O.P. No. 2 due to the alleged  
acts of the petitioner and others and the circumstances pointed out by  
O.P. No. 2 go against the petitioner--- no merit in present petition---order  
impugned rightly passed---petition dismissed. (Para- 8)*

**(2007) 2 PLJR 525, 2019 (3) PLJR 281**  
**Upon.**

**.....Relied**

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**Appearance :**

For the Petitioner : Mr. Arun Kumar, Adv.  
For the State : Mr. M.Dayal, APP  
For the Informant : Mr. Narendra Kumar, Adv.

**CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH  
CAV JUDGMENT**

Date : 05-02-2025

Heard Mr. Arun Kumar, learned counsel appearing for  
the petitioner, Mr. M. Dayal, learned APP appearing for the  
State and Mr. Narendra Kumar, learned counsel appearing for  
the informant (O.P. No. 2).

2. The present criminal miscellaneous petition has  
been filed under section 482 of the Code of Criminal Procedure,  
1973 (in short ‘Cr.P.C.’) with a prayer to quash the order dated  
08.08.2014 passed in Complaint Case No. 703(C) of 2013 by  
the court of Judicial Magistrate, 1<sup>st</sup> Class, Danapur by which the  
cognizance of the offences punishable under sections 323, 420  
and 504 of the Indian Penal Code, 1860 (in short ‘IPC’) has



been taken and the petitioner and co-accused persons have been summoned to face trial for the said offences.

**3.** Mr. Arun Kumar, learned counsel appearing for the petitioner submits that the petitioner and other accused persons are completely innocent and have not committed the alleged offences, in fact the complainant himself is an offender and accused of forging a sale deed in respect of the land in question and when one Shri Sunil Kumar, son of the accused Vijay Kumar Singh, filed a Complaint Case No. 481(C) of 2013 on 02.05.2013 against the complainant/O.P. No. 2, his vendor Gopal Prasad and others, then the O.P. No. 2 filed his case as a counterblast and also that at the instance of his vendor Gopal Prasad and further on the basis of complaint case No. 481(C) of 2013, Danapur P.S. Case No. 378 of 2013 was registered for the offences under sections 120B, 387, 436, 465, 466, 467 and 468 read with section 34 of the IPC and section 27 of the Arms Act, in which the complainant/O.P. No. 2 has been chargesheeted and in this regard, Annexure- 3 filed with this petition is relevant. It is further submitted that said Gopal Prasad, vendor of complainant, was secretary of the Society in question from 1983 to 31.12.1990 but the managing committee of the said Society was on suspension from 01.01.1991 to 17.12.1997, as such, the



said Gopal Prasad was not the secretary of the Society during the said period but even then in that period, he made several persons as members of the Society and sold several plots of the Society to various persons including the land (Plot No. 934, Khata No. 256) purchased by the complainant on 23.07.1992. The illegal acts of Gopal Prasad were challenged under section 48 of the Bihar Co-operative Societies Act, 1935 by filing Misc. Case No. 192 of 2000 in the court of the District Co-operative Officer, Patna in which all the acts of Gopal Prasad i.e. making of members and selling of lands or plots between 01.01.1991 and 17.12.1997 were declared as illegal by the order dated 07.06.2001 and the said order has attained finality, so, in view of this position, the sale deed of the complainant/O.P. No. 2 also stands vitiated and in this regard, the order dated 07.06.2001 passed in Misc. Case No. 192 of 2000 is relevant and the same has been filed as Annexure- '4' to the present petition.

4. Learned counsel has further submitted that the petitioner and co-accused Abhay Kumar Singh and Vijay Kumar Singh being members of the Society were elected as Secretary, President and Vice-President of the Society on 31.12.2024 and all of them are opposing the illegal acts of said Gopal Prasad, consequently, due to rival reasons, several cases in co-operative



courts and criminal courts have cropped up in between them and the two groups of the members of the Society and the instant case is one of them. It has been further submitted that said Gopal Prasad has also filed a Complaint Case bearing No. 846(C) of 2013 on 19.07.2013 against the petitioner and other accused persons, in which cognizance of the offences punishable under sections 403 and 417 of the IPC has been taken and the same has been challenged by filing criminal Revision Case No. 3974 of 2014 before the court of learned Sessions Judge and the same is pending.

5. Learned counsel has further submitted that the alleged offences of which cognizance has been taken are not made out even *prima facie* and the O.P. No. 2 filed his complaint with malicious intention and the prosecution of the petitioner and others which is based on frivolous allegations levelled to save the skin from the petitioner's case is an example of malicious prosecution. It has been further submitted that the petitioner was elected as Secretary to the management committee of the Co-operative Society in question on 31.12.2004 which was challenged by filing Election Case No. 03/2005, though the said case was allowed by the Divisional Joint Registrar, Co-operative Societies, Patna vide order dated



21.09.2005 but the same was challenged by the petitioner by filing an Appeal No. 159 of 2005 before the Registrar, Co-operative Societies, Bihar and the said order dated 21.09.2005 was stayed by order dated 20.03.2006 passed by the Registrar and these orders' copies have been filed as Annexure- 'P/7' and 'P/8' to the supplementary application.

6. Learned counsel has further submitted that the Election Officer relating to the election of the Society, to which the petitioner is one of the members, has been exonerated from the charges by the order passed by the Additional Chief Secretary-cum-Appellate Authority of the Department of Co-operative, Bihar, contained in Memo No. 2117 dated 03.08.2023 in the appeal preferred by the said Election Officer, so, the complainant's allegation that the petitioner was not the secretary of the Society in question stands completely falsified.

7. On the other hand, Mr. Narendra Kumar, learned counsel appearing for the O.P. No. 2 has argued that the O.P. No. 2 had deposited a sum of Rs. 16,525/- on 08.03.1984 in the Office of the Adarsh Griha Nirman Samiti Limited, Danapur (hereinafter referred to as 'Samiti') on account of registration of membership and cost towards the land and development and Samiti issued money receipt in his favour and subsequently, the



O.P. No. 2 paid the final installment on 30.08.1989 vide money receipt No. 228 and thereafter, the Samiti allotted the land in question on 24.12.1986 in favour of the O.P. and the possession over the land bearing Plot No. 09 at Sector-III, situated at Revenue Mauza – Sahzadpur, Thana No. 21, Circle – Danapur, Patna, measuring about 3000 sq. ft. was handed over to the O.P. and subsequently, the registered sale deed was executed in his favour as per the existing law bearing Deed No. 5976 dated 23.07.1992 in the office of the Sub-Registrar, Danapur, Patna and further, the O.P. applied for mutation of the land which was allowed in his favour after proper verification of the documents. The O.P. subsequently came to know about the formation of a new committee of the Samiti being elected on 31.12.2004 in absence of quorum wherein the petitioner and some others claimed themselves as being elected as President, Vice-President and Secretary respectively besides other office bearers of the said new committee and it is relevant to submit that Vijay Kumar Singh, Vice-President of new committee of the Samiti and Sunil Kumar Singh, Cooperative Extension Officer, Danapur are having a relation of father and son, so, due to this reason, the said Sunil Kumar Singh ought to not have held the election and should not have participated in the election



proceedings but he failed to do so and conducted the election of the said new Samiti wherein his father, Vijay Kumar Singh, was declared as Vice-President of the Samiti but later on, the said election was declared illegal by the Joint Registrar. The O.P. No. 2 came to know that the election to new Samiti was declared illegal by the court of Joint Registrar, Cooperative Society, Patna vide order dated 21.09.2005 in Election Case No. 03 of 2005 and an administrator was appointed in respect of the affairs of the Samiti. Later on, the petitioner and his associates challenged the said order of the Joint Registrar, Cooperative Society, Patna, before the Registrar, Cooperative Society, Patna by preferring an Appeal No. 159 of 2005 which was also dismissed after hearing the parties vide order dated 31.10.2008 and as there was no committee, hence, the Joint Registrar appointed an administrator (Government Official) to look after the affairs of the management of the Samiti and the same was managed by the administrator till 28.03.2010 and the copies of these orders have been filed with the counter affidavit. Learned counsel has further argued that despite the new Samiti being declared illegal by the Joint Registrar, Cooperative Society, Patna, the petitioner and his associates started introducing themselves in public as Office bearers of the said Samiti and





fraudulently started selling the allotted plots of the members which had already been allotted/sold by the previous committee to the respective members and later on, the petitioner and his associates formed different groups on account of differences being created among them. After the said dispute, a group lead by co-accused Abhay Kumar Singh and Vijay Kumar Singh sold the land (Plot No. 934, Khata No. 256) of the O.P. No. 2 in favour of four persons who are not the members of the Samiti, among the buyers, one is Neelam Singh, who is the daughter-in-law of the vendor Vijay Kumar Singh, the so-called Vice-President of the new Samiti, and also, the wife of Sunil Kumar Singh, who conducted the election of the new Samiti and further, all the deeds in question were executed in the year 2006 by the co-accused Abhay Kumar Singh and Vijay Kumar Singh whereas at that time, they were not holding any post in the alleged committee and the Samiti was being administered by an administrator, namely, Shri Jay Prakash Singh, Cooperative Extension Officer, Bikram, Patna but even then, the land concerned to the O.P. as well as other lands of several other persons were sold by the petitioner and his associates by pretending themselves as President and Vice-President of the committee of the Samiti. Learned counsel has further submitted



that the petitioner sold the land of the O.P. No. 2 again in favour of four persons during the year 2008-11 showing himself as Secretary of the alleged Samiti whereas at that time also, the Samiti was being administered by the administrator, of which, details has been given in the counter affidavit. It has been further argued that between the period 2008-10, the petitioner sold several plots of the Samiti to non-members of the Samiti whereas these plots had earlier been allotted by the previous Samiti to the then members by executing the sale deeds in their favour and in this regard, the details of some sale deeds has been given in the counter affidavit. It has been further argued that on 18.06.2013, when the O.P. No. 2 was busy on his aforesaid residential land (plot) then the accused persons including the petitioner armed with arms and ammunition came there and threatened him to face dire consequence and forcefully stopped the on going work and looted cash and other articles of the constructions work and regarding these allegations, the O.P. No. 2 filed the complaint which was duly examined by the learned Magistrate after holding an inquiry and recorded the statements of the witnesses and rightly took the cognizance of the alleged offences.

**8.** Heard both the sides and perused the order



impugned and other relevant materials. By the order impugned, the learned Magistrate has taken the cognizance of the offences punishable under sections 323, 420 and 504 of the IPC against the petitioner and others. As per allegation levelled by the O.P. No. 2 in his complaint, the O.P. No. 2 purchased a land in question having an area of 3000 sq. ft. from Aadarsh Sahkari Grih Nirman Samiti, Danapur (hereinafter referred to as 'Samiti') through its Secretary Gopal Prasad on 24.12.1986, of which registry was executed on 23.07.1992 and since the date of sale, the complainant (O.P. No. 2) has been keeping his possession over the said land and the revenue receipt had been issuing in his name till 20.12.2013 by the Bihar Government. The complainant further alleged that on 31.12.2004, a new committee of the Samiti of the said cooperative Society was formed by the petitioner, co-accused persons and others despite the absence of required corum but that election was declared illegal by the court of Joint Registrar, Cooperative Society vide order passed in Election Case No. 3/2005 owing to serious irregularities in the election procedure. Though the said dispute of election is subjudice but one thing is evident that the sale of the land in question in favour of the O.P. No. 2 by the then secretary of the Samiti has not been denied by the petitioner



though he has taken the defence that the then Secretary Gopal Prasad committed illegalities in making the members of the Society and transferring the plots of Samiti to several members but from the Annexure- '4' filed by the petitioner by which the allotments of the plots to 31 so-called members of the Samiti were cancelled, it appears that the name of the O.P. No. 2 did not find place in the list of that allottees and further, as per the O.P. No. 2, he purchased the land in question on 24.12.1986 by paying the required money. The petitioner has not shown any material to show that before the cancellation of the instrument (sale deed) of the O.P. No. 2, any opportunity was given to him by the concerned officer. It is revealed by the O.P. No. 2 in his counter affidavit that in the election of the new committee of the Samiti, the co-accused Vijay Kumar Singh, Vice President of the new committee and Sunil Kumar Singh, Cooperative Extension Officer, Danapur who have relation of father and son participated in the election proceeding and father of Sunil Kumar Singh was declared as Vice President of the Samiti and thereafter, the O.P. No. 2's plot bearing No. 934 & Khata No. 256 was again sold by the petitioner in the hands of four buyers showing himself as Secretary of the Samiti whereas at that time, the Samiti was being administered by an administrator



appointed by the Joint Registrar, Cooperative Society, Patna and thereafter, as per O.P. No. 2, the said land was again sold by co-accused Abhay Kumar Singh and Vijay Kumar Singh jointly in favour of four other persons who were not members of the Samiti. The O.P. No. 2 has also made some other allegations with regard to illegalities allegedly committed in the allotment of the plots of the Samiti in favour of several persons by the petitioners and others. While assailing the order impugned, the learned counsel for the petitioner has placed reliance upon the provisions of section 48 of the Bihar Co-operative Societies Act, 1935, which were mainly considered by the court of District Cooperative Officer, Patna while passing the order dated 07.06.2001 by which the allotments of the plots to 31 allottees were declared illegal. From bare perusal of the provisions of section 48 of the Bihar Co-operative Societies Act, it appears that it deals with any dispute arising in connection with the business of a registered society amongst the members, past members or persons claiming through the members or past members or deceased members, sureties of members etc. but the provisions of this section do not confer a power upon the concerned Registrar to cancel the allotment of a plot of an allottee without giving him an opportunity of hearing and further the right and title of a person with respect to a property must be determined



by a civil court of competent jurisdiction and such power should not be exercised by the Registrar. It has been settled by this Court in the case of **Smt. Swati Pande & Ors. vs. The Registrar, Co-operative Societies, Bihar, Patna & Ors.** reported in **(2007) 2 PLJR 525** that once a property is transferred by a registered document, a vested civil right devolves upon the transferee and to nullify such vested right only a civil court of competent jurisdiction has the authority and the Registrar has no such power or authority of a civil court to decide right and title of a party. The said principle has been followed by this Court in the case of **Anil Kumar Singh vs. State of Bihar** reported in **2019 (3) PLJR 281**. Though the question of the legality of the order passed under section 48 of the Bihar Cooperative Societies Act by the District Cooperative Officer, Patna is subjudice as stated by petitioner's counsel but there is sufficient *prima facie* material to show the wrongful loss to the O.P. No. 2 due to the alleged acts of the petitioner and others and the circumstances pointed out by the learned counsel appearing for the O.P. No. 2 as discussed above go against the petitioner. Furthermore, the defences taken by the petitioner are to be looked into by the trial court after taking evidences from both the sides and during the course of inquiry, the witnesses, who were examined by the O.P. No. 2 before learned Magistrate, supported the allegations relating to other offences



punishable under sections 323 and 504 of the IPC and there is sufficient *prima facie* material to proceed with the alleged offences against the petitioner. Accordingly, this Court finds no merit in this petition and the order impugned has been rightly passed, so, the instant petition stands dismissed.

**(Shailendra Singh, J)**

annu/-

AFR/NAFR	AFR
CAV DATE	21.01.2025
Uploading Date	05.02.2025
Transmission Date	05.02.2025

